

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





# 74-2380

To be argued by  
WILLIAM EPSTEIN

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*Paf 5*

*7C c*

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

-against-

ELDEN TURCOTTE and  
FORREST GERRY, JR.,

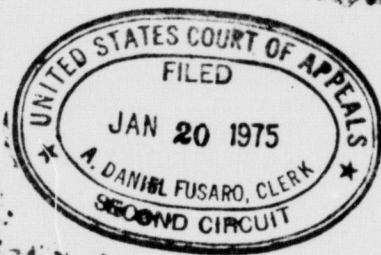
Appellants.

Docket No. 74-2408

Docket No. 74-2380

APPENDIX

ON APPEAL FROM A JUDGMENT  
OF THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK



WILLIAM J. GALLAGHER, ESQ.,  
THE LEGAL AID SOCIETY,  
Attorney for Appellant  
ELDEN TURCOTTE  
FEDERAL DEFENDER SERVICES UNIT  
509 United States Court House  
Foley Square  
New York, New York 10007  
(212) 732-2971

WILLIAM EPSTEIN,  
Of Counsel

PAGINATION AS IN ORIGINAL COPY



64 CR 64

PLATT, J.

JUDD, J.  
ATTORNEYS

TITLE OF CASE

THE UNITED STATES

VS.

ELDEN TURCOTTE

FORREST GERRY JR.

For U. S.: Meyerson

For Defendant:

NICHOLAS CASTELLANO

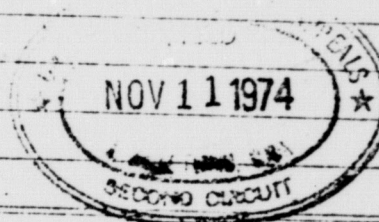
100 East Old Country

Mineola, N.Y. 11501

515-PI1-8383

Did unlawfully influence a witness before the Grand Jury

ABSTRACT OF COSTS	AMOUNT	CASH RECEIVED AND DISBURSED			
		DATE	NAME	RECEIVED	DISBURSED
Fine, \$1.00		10-18-74	Notice of Appeal Turcotte	5	-
Clerk,		10-21-74	Paid to Trial		
Marshal,		10-31-74	Notice of Appeal Gerry	5	-
Attorney,		10-31-74	Paid to Trial		
Commissioner's Court,					
Witnesses,					



DATE	PROCEEDINGS
1-28-74	Before JUDD, J.- Indictment filed
1-31-74	Before JUDD, J.- Case called- Deft and counsel present- Defts arraigned and enter pleas of not guilty- Bail contd as to both defts- Case ad 2-21-74 for trial
2-6-74	Notice of Motion filed for Discovery, Bill of Particulars, dismissal of the Indictment, Inspection of Grand Jury Minutes, etc. (ret. 4/5/74)
2-8-74	Before JUDD, J.- Case called- Deft and counsel not present- A.U.S.A. sent- Marked submitted- <del>Amendment to indictment</del>
2-8-74	By JUDD, J.- Order filed that motion to suppress trial denied- Motion discovery granted as to items 1, 2, 3, 4, 12, 13, 15 and 16- Motion to Brady material granted as to the extent of remaining disclosure of material favorable to Deft on the day of trial- Motion for judgment of acquittal denied

# 74 CR 64

DATE	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
	granted as to items 1, 2,3,4,5, 12, 13,15 and 16 to be supplied by 2-14-74- Motion to suppress deferred to the day of trial and motion to inspect Grand Jury minutes denied (see order attached to motion papers)		
2-15-74	Govt's Discovery and Inspection and Bill of Particulars filed		
2-21-74	Before JUDD, J.- Case called- Adj'd to 2-25-74 for trial		
2-27-74	Govts Notice of Readiness for Trial filed		
3-6-74	By JUDD, J.- Order filed that the bail limitations imposed upon the defts' travel are extended to include Louisiana and Texas (GERRY)		
✓ 3-11-74	Before JUDD, J - case called - defts & counsels present - Trial ordered and BEGUN - Jurors selected and sworn - Defts motion for mistrial is denied - Trial contd to March 12, 1974.		
✓ 2-12-74	Before JUDD, J.- Case called- Defts and counsel present - Trial resumed Defts' motion to suppress-motion denied- Trial contd to 3-13-74		
✓ 3-13-74	Before JUDD, J - case called - defts & counsels present - Trial resumed - defts motion for mistrial - motion denied - Trial continued to March 14, 1974.		
✓ 3-14-74	Before JUDD, J.-Case called- Defts and counsel present-Trial resumed Govt rests-Deft Turcotte's motion to dismiss argued and denied-Deft Gerry's motion to dismiss argued and denied-Deft Turcotte rests- Deft Gerry rests Both defts renew motions to dismiss-motion denied-Trial contd on 3-15-74 at 12:00 P.M.		
✓ 3-15-74	Before JUDD, J - case called - defts & counsels present - Trial resumed -Judge charges Jury - Marshals sworn - Order of Sustenance signed - Jury retires to deliberate at 3:40 PM - Jury returns at 5:20 PM to hear section of charge read back - Jury resumed deliberations at 5:30 PM - jury deliberations contd to Mar. 18, 1974.		
3-15-74	By JUDD, J - Order of Sustenance filed.		
3-18-74	Requests To Charge filed by Nicholas Castellano, Esq. (TURCOTTE)		
✓ 3-18-74	Before JUDD, J- case called - defts & counsels present - Juror #12 reported sick - defts motion for mistrial - Motion granted - mistrial declared - Jury discharged.		
3-18-74	4 Volumes of stenographers transcripts filed (pgs 1 to 709)		
3-18-74	Stenographers transcript filed dated Mar. 15, 1974.		
<del>3-18-74</del>	<del>Two stenographers transcript filed (pgs 740 to 1122)</del>		
6-11-74	Notice of readiness for trial filed		
6/23/74	Before PLATT, J. - Case called- Defts and counsel present- Set for trial for 7/9/74		



## CRIMINAL DOCKET

DATE	PROCEEDINGS
7-11-74	Notice of Motion filed, for dismissal of counts 2 and 3; granting deft TURCOTTE a separate trial, etc. (forwarded to Chambers to set ret. date)
7-12-74	Govts Memorandum filed in opposition to defts motion to dismiss and for separate trial, etc. (Turcotte)
7-15-74	Before PLATT, J - case called - adjd to July 16, 1974 at 9:45 am for trial.
7-16-74	Before JUDD, J. - Case adjd to 7-23-74 at 10:00 A.M. for trial
7-22-74	Govt's trial brief filed
✓ 7-23-74	Before PLATT, J. - Case called - Defts and counsel present - Trial ord and begun - Deft Turcotte's motion to sever denied - Jurors selected sworn - Trial contd to 7-24-74
✓ 7-24-74	Before PLATT, J - case called - defts & counsels present - trial resumed - Trial contd to 7-25-74.
✓ 7-25-74	Before PLATT, J - case called - trial resumed - trial contd to July 29, 1974.
✓ 7-29-74	Before PLATT, J. - Case called - Defts and counsel present - Trial resumed Trial contd to 7-30-74
7-30-74	Before PLATT, J - case called - trial resumed - deft Turcotte moves to dismiss counts 1, 2-3 - motion denied as to each count - deft Garry motion to dismiss counts 2 & 3 - motion denied as to each count - Trial resumed on July 31, 1974
7-31-74	Before Platt, J - case called - trial resumed - Deft Turcotte motion to dismiss counts 1, 2, 3 - motion denied - Deft Gerry motion for Acquittal - motion denied - deft Turcotte motion for a mistrial - motion denied - trial contd to 8-1-74.
8-1-74	Before PLATT, J. - Case called - Defts and counsel present - Trial resumed Court charges jury - Order of sustenance signed - Trial contd to 8-2- at 9:30 A.M.
8-1-74	By PLATT, J. - Order of sustenance filed
✓ 8-2-74	Before PLATT, J. - Case called - Defts and counsel present - Trial resumed Jury returns with a verdict of guilty on counts 1, 2, 3 as to deft TURCOTTE and a verdict of guilty on counts 2 and 3 as to deft GERRY - Jury polled - Trial concluded
8-2-74	By PLATT, J. - Order of sustenance filed
8-2-74	Steno-graphic Transcript dated 7-23-74, 7-24-74, 7-25-74 and 7-29-74 filed (per 1-74(a))

DATE	PROCEEDINGS
8-12-74	Stenographers transcript filed dated 8-2-74.
8-15-74	Stenographers transcript filed dated 8-1-74.
8-30-74	Affidavit of Elden Turcotte filed
10-11-74	Before PLATT, J - Case called - deft GERRY & counsel Ed Bobick present. Deft is sentenced on count 2 for imprisonment for 4 years to run concurrently with the sentence imposed in 73 CR 1068 and that the deft be fined the sum of \$5,000 and deft is sentence on count 3 to imprisonment for 4 years, said sentence on count 3 to run concurrently with sentence on count 2 and concurrently with sentence imposed in 73 CR - 1068 and the deft is fined the sum of \$5,000.00
10-11-74	Judgment & Commitment filed - certified copies to Marshal (GERRY)
10-18-74	Before PLATT, J - case called - deft Turcotte & counsel N. Castellano present - deft sentenced on count 1 to imprisonment for a term of 1 year and 1 day; on count 2 for a term of 1 year and 1 day, said sentence on count 2 to run concurrently with the sentence on count 1; and on count 3 the deft is sentenced to imprisonment for one year and 1 day, said sentence on count 3 to run concurrently with the sentence on count 1 and count 2. The court recommends the institution at Danbury, Conn. Bail confd pending appeal.
10-18-74	Judgment & Commitment filed - certified copies to Marshal (TURCOTTE)
10-18-74	Notice of Appeal filed (TURCOTTE)
10-18-74	Docket entries and duplicate of Notice mailed to the Court of Appeals (TURCOTTE)
10-21-74	Notice of Appeal filed (GERRY JR)
10-21-74	Docket entries and duplicate of Notice of Appeal together with Form A mailed to the Court of Appeals (GERRY JR)
11-7-74	Record on appeal certified and mailed to court of appeals (GERRY)

A TRUE COPY	
DATE	11-7-1974
LEWIS ORGEL	
BY	CLERK
DEPUTY CLERK	



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----x  
UNITED STATES OF AMERICA

-v-

ELDEN TURCOTTE  
FORREST GERRY, JR.

Defendants

INDICTMENT

13 U.S.C. §1623  
13 U.S.C. §1503  
18 U.S.C. §371  
18 U.S.C. §2

-----x  
**74CR 64**

THE GRAND JURY CHARGES:

COUNT ONE

On or about the 14th day of September 1973, in the Eastern District of New York, a competent tribunal, that is, a Grand Jury of the United States of America, duly impaneled and sworn in the United States District Court for the Eastern District of New York, was conducting an inquiry to determine among other things, whether, in connection with the case of United States v. John Doe, Criminal Case No. 731,774, there had been committed in the Eastern District of New York violations of 18 U.S.C. §224 (Sports Bribery) and other Federal criminal statutes, said inquiry being a case in which a law of the United States authorized an oath

It was material to this Grand Jury inquiry to ascertain, among other things:

a. Whether or not there was any business relationship between the defendant Eldon Turcotte and the defendant Forrest Gerry, Jr.

b. Whether, or not Forrest Gerry, Jr. was the real and actual owner or part owner of horses listed in other persons names.

c. Whether or not Elden Turcotte was the real and actual owner or part owner of horses listed in other persons names.

On or about the 14th day of September 1973, the defendant Elden Turcotte, having duly taken an oath before the said Grand Jury that, as a witness before said Grand Jury, he would testify truly, did then and there, wilfully and contrary to such oath, state material matter which he did not believe to be true and knew to be false to wit:

A. Let me ask you this: With particular horses, how would you be involved with them as an owner, as a trainer, as a driver? Is there anything else that I'm leaving out because I'm not familiar with racing myself.

A. No.



Q. Let me ask you with all three, as an owner, as a trainer, as a driver, for any horses that you were an owner of, that you drive or that you are a trainer of, is Forrest Gerry the real owner of those horses?

A. No.

Q. Do you know anything about Forrest's hidden ownership of horses, the fact that he owns horses that are listed in other people's names?

A. No.

.....

Q. Mr. Turcotte, have you driven any horses within the last nine months that you know have belonged to Forrest Gerry?

A. That I knew belonged to Forrest Gerry?

Q. Yes.

A. No. I raced horses for a Mr. Kraft Hill Farms that I was under the impression and believe they belong to Kraft Hill Farms. From my understanding just rumors going around, I don't know if there's any truth to it that Forrest Gerry was the agent on these horses that they were bought by him for Kraft Hill Farms. The horses were sent to me registered for Kraft Hill Farms. The money that these horses earned was sent to Kraft Hill Farms. The claim check, when it was claimed, went to Kraft Hill Farms and Kraft Hill Farms as far as I'm concerned, still owes me the money. Now, as far as Forrest Gerry owning the horses, not to my knowledge.

Q. Kraft Hill Farms who would be the owner there?

A. I think it's two boys. Their sons or Dave Kraft.

(Title 18, United States Code, Section 1623)

COUNT TWO

From on or about the 21st day of May, 1973 to on or about the 30th day of August, 1973 both dates being approximate and inclusive, within the District of New Jersey, the defendant Forrest Gerry, Jr. and the defendant Eldon Turcotte, did corruptly endeavor to influence, obstruct and impede the due administration of justice in the United States District Court for the Eastern District of New York by endeavoring to influence David Kraft, a witness before a Grand Jury of the Eastern District of New York investigating possible violations of the sports bribery law, Title 18, United States Code, Section 224, to give false testimony before the said grand jury in relation to the aforesaid violation.

(Title 18, United States Code, Section 1593, Title 18  
United States Code, Section 2.)

COUNT THREE

From on or about the 21st day of May, 1973 to on or about the 14th day of September, 1973 both dates being approximate and inclusive, within the Eastern District of New York and the District of New Jersey, the defendant Forrest Gerry, Jr. and the defendant Eldon Turcotte wilfully and knowingly did combine, conspire, confederate and agree together and with each other to commit the following offenses against the United States:

1. to wilfully and knowingly endeavor to influence, obstruct and impede the due administration of justice in the United States District Court for the Eastern District of New York by endeavoring to influence David Kraft, a witness, before a Grand Jury of the Eastern District of New York investigating possible violations of the sports bribery law, Title 18, United States Code, Section 224, to give false testimony before said Grand Jury in relation to the aforesaid violation, in violation of Title 18, United States Code, Section 1503 and 2.

2. to procure Eldon Turcotte to commit perjury, an offense against the United States in violation of Title 18, United States Code, Section 1622.

In furtherance of the conspiracy and to effect the objects thereof, the defendants performed the following:

OVERT ACTS

1. On or about August 4, 1973 Forrest Gerry, Jr. met with David Kraft at Kraft Hill Farms, Farmingdale, New Jersey.

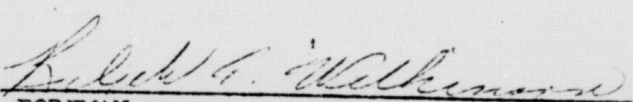
2. On or about August 19, 1973 Forrest Gerry Jr. and Eldon Turcotte met with David Kraft at Kraft Hill Farms, Farmingdale, New Jersey.

3. On or about August 30, 1973 Forrest Gerry met with David Kraft Hill Farms, Farmingdale, New Jersey.

4. On or about September 14, 1973 Eldon Turcotte testified as a witness before the Special May 1972 Grand Jury in the Eastern District of New York.

(Title 18, United States Code, Section 371).

A TRUE BILL

  
FOREMAN



1  
2  
3  
4  
5 CHARGE TO THE JURY  
6  
7  
8  
9  
10

11 THE COURT: Ladies and gentlemen of the jury,  
12 I'm going to give you a charge on the law.

13 I generally read the charge that I give to you.  
14 I realize it is more difficult to follow, but on the  
15 other hand it minimizes the possibility or the pro-  
16 bability of error and I think you get a more accurate  
17 instruction of the law.

18 So, I ask that you pay particular attention to  
19 what is said and I'll try to read slowly so that you  
20 will be able to understand.

21 It's going to take a little longer than usual,  
22 perhaps, that way, but try to be as attentive as  
23 possible.

24 Now that you have heard the evidence and the  
25 argument, it becomes my duty to give the instructions

1 of the Court as to the law applicable to this case.

2 It is your duty as jurors to follow the law as  
3 stated in the instructions of the Court, and to apply  
4 the rules of law so given to the facts as you find them  
5 from the evidence in the case.

6 You are not to single out one instruction alone  
7 as stating the law, but must consider the instructions  
8 as a whole.

9 Neither are you to be concerned with the wisdom  
10 of any rule of law stated by the Court. Regardless  
11 of any opinion you may have as to what the law ought  
12 to be, it would be a violation of your sworn duty to  
13 base a verdict upon any other view of the law than that  
14 given in the instructions of the Court; just as it would  
15 be a violation of your sworn duty, as judges of the  
16 facts, to base a verdict upon anything but the evidence  
17 in the case.

18 You are to perform your duty as jurors without  
19 any sympathy or prejudice for or against any defendant.

20 You must not permit yourselves to be governed  
21 by sympathy, bias, prejudice or any other considerations  
22 not founded on the evidence and these instructions on  
23 the law.

24 Justice through trial by jury must always depend  
25 upon the willingness of each individual juror to seek



1  
2 the truth as to the facts from the same evidence  
3 presented to all the jurors and to arrive at a verdict  
4 by applying the same rules of law, as given in the  
5 instructions of the Court.

6 You have been chosen and sworn as jurors in this  
7 case to try the issues of fact presented by the allega-  
8 tions of the indictment and the denial made by the  
9 "Not guilty" plea of the accused. You are to perform  
10 this duty without bias or prejudice as to any party.  
11 Again, the law does not permit jurors to be governed  
12 by sympathy, prejudice, or public opinion. Both the  
13 accused and the public expect that you will carefully  
14 and impartially consider all the evidence in the case,  
15 follow the law as stated by the Court and reach a  
16 just verdict, regardless of the consequences.

17 I am going to send the exhibits which have been  
18 received in evidence with you as you retire for your  
19 deliberations. Except for the transcripts of the tapes  
20 which are not in evidence. If you wish any portion or  
21 all of the tapes re-played or any part of the transcript  
22 of any witness' testimony re-read, you should so advise  
23 the Court. There are three tape dates: August 4,  
24 August 19 and August 30.

25 (Continued on next page.)

1           The law presumes a defendant to be innocent of  
2  
3 crime. Thus, a defendant, although accused, begins  
4 the trial with a "clean slate" -- with no evidence  
5 against him. And the law permits nothing but legal  
6 evidence presented before the jury to be considered  
7 in support of any charge against the accused, so the  
8 presumption of innocence alone is sufficient to acquit  
9 a defendant, unless the jurors are satisfied beyond a  
10 reasonable doubt of the defendant's guilt after careful  
11 and impartial consideration of all the evidence in the  
12 case.

13           It is not required that the Government prove  
14 guilt beyond all possible doubt. The test is one of  
15 reasonable doubt. A reasonable doubt is a doubt based  
16 upon reason and common sense -- the kind of doubt that  
17 would make a reasonable person hesitate to act. Proof  
18 beyond a reasonable doubt must, therefore, be proof of  
19 such a convincing character that you would be willing  
20 to rely and act upon it unhesitatingly in the most  
21 important of your own affairs.

22           The jury will remember that a defendant is never  
23 to be convicted on mere suspicion or conjecture.

24           A reasonable doubt does not mean a doubt arbitrar-  
25 ily and capriciously asserted by a juror because of his  
or her reluctance to perform an unpleasant task. It  
does not mean a doubt arising from the natural sympathy



1  
2 which we all have for others. It is not necessary for  
3 the Government to prove the guilt of the defendant  
4 beyond all possible doubt. For if that were the rule,  
5 very few people would ever be convicted. It is  
6 practically impossible for a person to be absolutely  
7 sure and convinced of any controverted fact which,  
8 by its nature, is not susceptible of mathematical  
9 certainty. In consequence, the laws say that a doubt  
10 should be a reasonable doubt, not a possible doubt.

11 Again, reasonable doubt means a doubt suffi-  
12 cient to cause a prudent person to hesitate to act in  
13 the most important affairs of his or her life.

14 An indictment is but a formal method of accusing  
15 a defendant of a crime. It is not evidence of any kind  
16 against the accused.

17 There are two types of evidence from which a jury  
18 may properly find a defendant guilty of a crime. One  
19 is direct evidence -- such as the testimony of an eye-  
20 witness. The other is circumstantial evidence -- the  
21 proof of facts and circumstances which rationally imply  
22 the existence or non-existence of other facts because

23 (Continued on next page.)  
24  
25



1  
2 such other facts usually follow according to the common  
3 experience of mankind. Thus, the footprint of a man  
4 in the sand implied to Robinson Crusoe that there was  
5 another man with him on the desert island and indeed  
6 there was, the man Friday.

7 Thus, on the one hand you may have direct evidence  
8 of the issue and on the other hand you may have circum-  
9 stantial evidence of the issue. The law does not hold  
10 that one type of evidence is necessarily of better qual-  
11 ity than the other. The law requires only that the  
12 Government prove its case beyond a reasonable doubt both  
13 on the direct and circumstantial evidence. At times  
14 the jury might feel that circumstantial evidence is of  
15 better quality. At other times they may feel direct  
16 evidence is of better quality. That judgment is left  
17 entirely to you.

18 As a general rule, the law makes no distinction  
19 between direct and circumstantial evidence, but simply  
20 requires that, before convicting a defendant, the jury  
21 be satisfied of the defendant's guilt beyond a reasonable  
22 doubt from all the evidence in the case.

23 Count one of the Indictment charges that on or  
24 about September 14, 1973, in the Eastern District of  
25 New York, the Grand Jury duly impaneled and sworn in  
this Court was conducting an inquiry to determine among

1  
2 other things whether, in connection with the case of  
3 United States v. John Doe, there had been committed in  
4 this District violations of Title 18, U.S.C., 224,  
5 (Sports Bribery), and other Federal criminal statutes,  
6 said inquiry being a case in which a law of the United  
7 States authorized an Oath to be administered. Such Code  
8 further alleges that it was material to this Grand Jury  
9 in further ascertaining, among other things:

10 A. Whether or not there was any business rela-  
11 tionship between the defendant Eldon Turcotte and the  
12 defendant Forrest Gerry, Jr.

13 B. Whether or not Forrest Gerry, Jr. was the  
14 real and actual owner or part owner of horses listed in  
15 other persons' names.

16 C. Whether or not Eldon Turcotte was the real  
17 and actual owner or part owner of horses listed in other  
18 persons names.

19 Such Count further alleges that on or about Sep-  
20 tember 14, 1973, the defendant Eldon Turcotte, having  
21 duly taken an Oath before the said Grand Jury that, as  
22 a witness before said Grand Jury, he would testify truly,  
23 did then and there, wilfully and contrary to such Oath,  
24 state material matter which he did not believe to be  
25 true and knew to be false, to wit:



1  
2 "Question: Let me ask you this: With particular  
3 horses, how would you be involved with them as an owner,  
4 as a trainer, as a driver? Is there anything else that  
5 I'm leaving out because I am not familiar with racing  
6 myself?

7 "Answer: No.

8 "Question: Let me ask you with all three, as an  
9 owner, as a trainer, as a driver, for any horses that  
10 you were an owner of, that you drive or that you are a  
11 trainer of, is Forrest Gerry the real owner of those  
12 horses?

13 "Answer: No.

14 "Question: Do you know anything about Forrest's  
15 hidden ownership of horses, the fact that he owns horses  
16 that are listed in other people's names?

17 "Answer: No."

18 "Question: Mr. Turcotte, have you driven any  
19 horses within the last nine months that you know have  
20 belonged to Forrest Gerry?

21 "Answer: That I knew belonged to Forrest Gerry?

22 "Question: Yes.

23 "Answer: No. I raced horses for a Mr. Kraft  
24 Hill Farms that I was under the impression and believe  
25 they belong to Kraft Hill Farms. From my understanding,  
just rumors going around, I don't know if there's any

1  
2 truth to it that Forrest Gerry was the agent on these  
3 horses, that they were bought by him for Kraft Hill  
4 Farms. The horses were sent to me registered for Kraft  
5 Hill Farms. The money that these horses earned was sent  
6 to Kraft Hill Farms. The claim check, when it was  
7 claimed, went to Kraft Hill Farms, and Krfat Hill Farms,  
8 as far as I'm concerned, still owes me the money. Now,  
9 as far as Forrest Gerry owning the horses, not to my  
10 knowledge.

11 "Question: Kraft Hill Farms, who would be the  
12 owner there?

13 "Answer: I think it's two boys. They're sons  
14 of Dave Kraft."

15 All in violation of Title 18, United States Code,  
16 Section 1623.

17 Said Section 1623 reads in pertinent part that:

18 "Whoever under Oath in any proceeding before or  
19 ancillary to any . . . Grand Jury of the United States  
20 knowingly makes any false material declaration" shall  
21 be in violation of the law.

22 The essential elements of the crime are as follows"

23 1. That the testimony was given under Oath in a  
24 proceeding before a Grand Jury duly impaneled and Sworn  
25 in this Court.



2           2. That the testimony so given was false in one  
3 or more of the respects charged, and

4           3. That the false testimony was wilfully made  
5 as to facts material to the proceeding.

6           The materiality of the matter involved in the  
7 alleged false testimony is not a matter with which you  
8 are concerned but rather is a question for the Court  
9 to decide. You are instructed that the questions asked  
10 of the accused before the Grand Jury, as alleged in the  
11 Indictment, constituted material matter in this proceed-  
12 ing.

13           As to the first element of the crime, the Federal  
14 Rules provide with respect to the Grand Jury that the  
15 Foreman shall have the power to administer Oaths and  
16 Affirmations and sign all Indictments. You heard the  
17 Grand Jury Foreman testify. If you are satisfied that  
18 he did in fact administer an Oath to Mr. Turcotte as  
19 he testified, then you may find that the first element  
20 has been established.

21           With respect to the second element, that the testi-  
22 mony so given was false in one or more respects, that is  
23 something for you to determine.

24           As to the third element, you have to determine  
25 whether or not the defendant Turcotte knew that the testi-

1  
2 money he gave was false at the time he gave it, and that  
3 involves a question of his state of mind. The question  
4 of his state of mind is an issue to be found by the  
5 jury. It is hard to determine from direct testimony,  
6 but it can be inferred from things the defendant says  
7 or does. As a practical matter, it is almost impossible  
8 to prove the workings of a defendant's mind when he  
9 testified before the Grand Jury, but in appropriate cir-  
10 cumstances, as here, you may infer a belief in the  
11 falsity by proof of the falsity itself, if you have  
12 found this falsity to have been so proved beyond a  
13 reasonable doubt.

14 You don't have to make such inference, but if  
15 you find the testimony was false when given before the  
16 Grand Jury, you may find the third element, that the  
17 testimony, if you decide it was given falsely, was given  
18 knowingly and wilfully.

19 As stated before, the burden is always upon the  
20 prosecution to prove beyond a reasonable doubt every  
21 essential element of the crime charged.

22 In considering the Count of the Indictment charging  
23 the defendant Turcotte with the crime of perjury, I charge  
24 you that it shall be a defense to the charge of perjury  
25 if the defendant, at the time he made the declarations



1  
2 alleged to be false, believed said declarations were  
3 true. If, after hearing all of the testimony, you have  
4 a reasonable doubt in your mind as to whether or not the  
5 defendant, Eldon Turcotte, believed the declarations  
6 made by him were true, then you must resolve that doubt  
7 in his favor and find him Not Guilty of the crime of  
8 Perjury.

9 Count Two of the Indictment charges that from on  
10 or about the 21st day of May, 1973, to on or about  
11 August 30, 1973, within the District of New Jersey, the  
12 defendant Forrest Gerry, Jr., and the defendant Eldon  
13 Turcotte, did corruptly endeavor to influence, obstruct  
14 and impede the due administration of justice in the  
15 United States District Court for this District by endeavor-  
16 ing to influence David Kraft, a witness before a Grand  
17 Jury of the Court investigating possible violations of  
18 the Sports Bribery Law, 18 U.S.C., Section 224, to give  
19 false testimony before the said Grand Jury in relation  
20 to the aforesaid violation, all in violation of Title 18,  
21 United States Code, Section 1503, and Title 18, United  
22 States Code, Section 2.

23 Section 1503 provides in pertinent part that:

24 "Whoever corruptly, or by threats or force . . .  
25 influences, obstructs, or impedes, or endeavors to influ-

1  
2       ence, obstruct, or impede the due administration of  
3       justice," shall be in violation of the law.

4       The essential elements of this crime are as  
5       follows:

6           1. That the defendants influenced, obstructed or  
7       impeded or endeavored to influence, obstruct or impede  
8       the due administration of justice, i.e., the Grand Jury  
9       investigation.

10          2. That the due administration of Federal justice,  
11       i.e., the Grand Jury investigation, was the object of  
12       the defendants' acts.

13          3. The defendants acted corruptly.

14       As to the first element of the crime, any conduct  
15       that is capable of producing an effect which prevents  
16       justice from being duly administered is considered to  
17       be such an influence or obstruction.

18       If you find that the acts of the defendants were  
19       such that they could interfere or did influence the  
20       testimony that they expected Kraft might give, then you  
21       can find that this element is satisfied.

22       Moreover, it is not necessary for the crime of  
23       endeavoring to influence to find that the Grand Jury  
24       investigation was actually impeded or obstructed, or  
25       that Mr. Kraft actually committed perjury on his subsequent



1  
2 appearances before the Grand Jury. The crime is in the  
3 attempt or the endeavor.

4 The second element you must find is that it was  
5 the due administration of Federal justice which was the  
6 object of the defendant's acts.

7 The performance of its function by a duly impan-  
8 eled Grand Jury comes within the meaning of the term  
9 administration of justice.

10 There was reference to the fact that Mr. Kraft  
11 was going to talk to the FBI as well as to the Grand  
12 Jury. However, the Indictment charges that there was an  
13 attempt to influence David Kraft to give false testimony  
14 before the Grand Jury, and you don't consider what they  
15 might have wanted him to do with reference to the FBI  
16 unless there was some indication that there was an  
17 intent to affect his testimony before the Grand Jury.

18 If the intent was to affect Mr. Kraft's testimony  
19 before the New Jersey Harness Commission, that is not  
20 within the purpose of this, the scope of this Indict-  
21 ment.

22 The third element you must find is that the  
23 defendants acted corruptly.

24 With respect to the word "corruptly," in the  
25 third element -- any endeavor to impede and obstruct

1  
2 the due administration of justice in the manner speci-  
3 fied in the indictment is corrupt.

4 Again, the burden is always upon the prosecution  
5 to prove beyond a reasonable doubt every essential  
6 element of the crime charged.

7 You will recall that I have made reference in  
8 the Indictment to Section 2 of Title 18 of the United  
9 States Code. Still on Count 2 of the indictment:

10 "Whoever commits an offense against the United  
11 States, or aids, abets, counsels, commands, induces or  
12 procures its commission is punishable as a principal.

13 "Whoever wilfully causes an act to be done, which  
14 if directly performed by him or another would be an offense  
15 against the United States, is punishable as a principal."

16 The guilt of a defendant may be established without  
17 proof that the accused personally did every act constitut-

18 (Continued on next page.)  
19  
20  
21  
22  
23  
24  
25



ing the offense charged.

In other words, every person who willfully participates in the commission of a crime may be found guilty of that offense. Participation is willful if done voluntarily and intentionally, and with a specific intent to do something the law forbids, or with a specific intent to further do something the law requires to be done; that is to say, with bad purpose either to disobey or to disregard the law.

In order to aid and abet another to commit a crime, it is necessary that the accused willfully associate himself in some way with the criminal venture, and willfully participate in it as he would in something he wishes to bring about; that is to say, that he willfully seeks by some act or omission of his to make the criminal venture succeed.

An act or omission is "willfully" done if done voluntarily and intentionally and with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or to disregard the law.

You, of course, may not find the defendant guilty unless you find beyond a reasonable doubt that every

1  
2 element of the offense as defined in these instructions  
3 was committed by some person or persons, and that the  
4 defendant participated in its commission.

5 Count Three of the Indictment charges that from  
6 on or about May 21, 1973, to on or about September 14,  
7 1973, within the Eastern District of New York, and the  
8 District of New Jersey, the defendant Forrest Gerry, Jr.  
9 and the defendant Eldon Turcotte willfully and knowing  
10 did combine, conspire, confederate and agree together  
11 and with each other to commit the following offenses  
12 against the United States:

13 1. To willfully and knowingly endeavor to influ-  
14 ence, obstruct and impede the due administration of jus-  
15 tice in this Court by endeavoring to influence David  
16 Kraft, a witness before a Grand Jury of this Court in-  
17 vestigating possible violations of the Sports Bribery Law,  
18 18 U.S.C., Section 224, to give false testimony before  
19 said Grand Jury in relation to the aforesaid violation  
20 of 18 U.S.C. Sections 1503 and 2.

21 2. To procure Eldon Turcotte to commit perjury.  
22 an offense against the United States in violation of  
23 18 U.S.C., Section 1622.

24 In furtherance of the Conspiracy and to effect  
25 the objects thereof, the defendants performed the follow-



ing overt acts:

1. On or about August 4, 1974, Forrest Gerry, Jr. met with David Kraft at Kraft Hill Farms, Farmingdale, New Jersey.

2. On or about August 19, 1973, Forrest Gerry, Jr. and Eldon Turcotte met with David Kraft at Kraft Hill Farms, Farmingdale, New Jersey.

3. On or about August 30, 1973, Forrest Gerry met with David Kraft of Kraft Hill Farms, Farmingdale, New Jersey.

4. On or about September 14, 1973, Eldon Turcotte testified as a witness before the Special May, 1972 Grand Jury in the Eastern District of New York, all in violation of Title 18, United States Code, Section 371.

Said Section 371 provides in pertinent part that:

"If two or more persons conspire . . . to commit any offense against the United States, . . . and one or more of such persons do any act to effect the object of the conspiracy, each" is guilty of an offense against the United States.

Four essential elements are required to be proved in order to establish the offense of Conspiracy charged in the indictment:

1. That the Conspiracy described in the Indict-

1 ment was willfully formed and was existing at or about  
2 the time alleged;

3 2. That the accused willfully became a member  
4 of the Conspiracy.

5 3. That one of the conspirators thereafter,  
6 knowingly committed at least one of the overt acts  
7 charged in the Indictment at or about the time and  
8 place alleged, and

9 4. That such overt act was knowingly done in  
10 furtherance of some object or purpose of the Conspiracy  
11 as charged.

12 If the jury should find beyond a reasonable  
13 doubt from the evidence of the case that existence of  
14 the Conspiracy charged in the Indictment has been proved,  
15 and that during the existence of the Conspiracy one of  
16 the overt acts alleged was knowingly done by one or more  
17 of the conspirators in furtherance of some object or  
18 purpose of the Conspiracy, namely the obstruction of  
19 justice, then proof of the Conspiracy offense charged  
20 is complete, and it is complete as to every person found  
21 by the jury to have been willfully a member of the Con-  
22 spiracy at the time the overt act was committed, regard-  
23 less of which of the Conspirators did the overt act.

24 As stated before, the burden is always on the  
25 prosecution to prove beyond a reasonable doubt every



1  
2 essential element of the crime charged.

3 A Conspiracy is a combination of two or more  
4 persons, by concerted action, to accomplish some unlaw-  
5 ful purpose. So, a Conspiracy is a kind of "partnership  
6 in criminal purposes," in which each member becomes the  
7 agent of every other member. The gist of the offense  
8 is a combination or agreement to disobey, or to disregard,  
9 the law.

10 Mere similarity of conduct among various persons,  
11 and the fact they may have associated with each other,  
12 and may have assembled together and discussed common  
13 aims and interests, does not necessarily establish proof  
14 of the existence of a Conspiracy.

15 However, the evidence in the case need not show  
16 that the members entered into any express or formal  
17 agreement, or that they directly, by words spoken or in  
18 writing, stated between themselves what their object or  
19 purpose was to be, or the details thereof, or the means  
20 by which the object or purpose was to be accomplished.

21 What the evidence in the case must show beyond a  
22 reasonable doubt, in order to establish proof that a  
23 Conspiracy existed, is that the members in some way or  
24 manner, or through some contrivance, positively or tacitly  
25 came to a mutual understanding to try to accomplish a

common and unlawful plan.

The evidence in the case need not establish that all the means or methods set forth in the Indictment were agreed upon to carry out the alleged Conspiracy; nor that all means or methods, which were agreed upon were actually used or put into operation; nor that all of the persons charged to have been members of the alleged Conspiracy were such. What the evidence in the case must establish beyond a reasonable doubt is that the alleged Conspiracy was knowingly formed, and that one or more of the means or methods described in the Indictment were agreed upon to be used, in an effort to accomplish some object or purpose of the Conspiracy, as charged in the Indictment; and that two or more persons, including one of the accused, were knowingly members of the Conspiracy, as charged in the Indictment.

In your consideration of the evidence in the case as to the offense of Conspiracy charge, you should first determine whether or not the Conspiracy existed, as alleged in the Indictment. If you conclude that the Conspiracy did exist, you should next determine whether or not each of the accused wilfully became a member of the Conspiracy.

If it appears beyond a reasonable doubt from the



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2 evidence in the case that the Conspiracy alleged in the  
3 Indictment was willfully formed, and that a defendant  
4 lawfully became a member of the Conspiracy either at  
5 its inception or afterwards, and that thereafter one  
6 or more of the Conspirators committed one or more overt  
7 acts in furtherance of some object or purpose of the  
8 Conspiracy, then there may be a conviction, even though  
9 the Conspirators may not have succeeded in accomplish-  
10 ing their common object or purpose, and in fact may have  
11 failed so doing.

12 The extent of any defendant's participation, more-  
13 over, is not determinative of his guilt or innocence.  
14 A defendant may be convicted as a Conspirator even though  
15 he may have played only a minor part in the Conspiracy.

16 An "overt act" is an act knowingly committed by  
17 one of the Conspirators, in an effort to effect or ac-  
18 complish some object or purpose of the Conspiracy. The  
19 overt act need not be criminal in nature, if considered  
20 separately and apart from the Conspiracy. It may as in-  
21 nocent as the act of a man walking across the street,  
22 or driving an automobile, or using a telephone. It must,  
23 however, be an act which follows and tends toward accom-  
24 plishment of the plan or scheme, it must be knowingly  
25 done in furtherance of some object or purpose of the

## Conspiracy charged in the Indictment.

One may become a member of the Conspiracy without full knowledge of all the details of the Conspiracy. On the other hand, a person who has no knowledge of a Conspiracy, but happens to act in a way which furthers some object or purpose of the Conspiracy, does not thereby become a Conspirator.

Before the jury may find the defendants or any other person has become a member of the Conspiracy, the evidence in the case must show beyond a reasonable doubt that the Conspiracy was knowingly formed and that the defendants or other person who is claimed to have been a member, willfully participated in the unlawful plan, with the intent to advance or further some object or purpose of the Conspiracy.

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## Charge of the Court

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To act or participate willfully means to act or participate voluntarily or intentionally, and with specific intent to do something the law forbids; that is to say, to act or participate with the bad purpose either to disobey or to disregard the law. So, if a defendant or any other person, with understanding of the unlawful character of the plan, knowingly encourages, advises or assists, for the purpose of furthering the undertaking or scheme, he thereby becomes a willful participant, a conspirator.

One who willfully joins in an existing conspiracy is charged with the same responsibility as if he had been one of the originators or instigators of the conspiracy.

In determining whether a conspiracy existed, the Jury should consider the actions and the declarations of all the alleged participants. However, in determining whether the defendant was a member of a conspiracy, if any, the Jury should consider only his acts and statements. He cannot be bound by the acts or declarations of other participants until it is established that a conspiracy existed, and that he was one of its members.

Whenever it appears beyond a reasonable doubt

## Charge of the Court

from the evidence in the case that a conspiracy existed, and that a defendant was one of the members, then the statements thereafter knowingly made and the acts knowingly done, by any person likewise found to be a member, may be considered by the Jury as evidence in the case as to the defendant found to have been a member, even though the statements and acts made may have occurred in the absence and without the knowledge of the defendant, provided such statements and acts were knowingly made and done during the continuancy of such conspiracy, and in furtherance of some object or purpose of the conspiracy. Otherwise, any admission or incriminatory statement made or act done outside of Court, by one person, may not be considered as evidence against any person who was not present and did not hear the statement made or see the act done.

Thereafter, statements of any conspirator, which are not in furtherance of the conspiracy, or made before its existence, or after its termination, may be considered as evidence only against the person making it.

The indictment charges a conspiracy among the defendants, Turcotte and Gerry, both of whom are named in the indictment as co-conspirators. A person cannot conspire with himself and therefore you cannot find



## Charge of the Court

1  
2 either defendant guilty unless you find beyond a  
3 reasonable doubt that he participated in the conspiracy  
4 as charged with the other defendant.

5 Now, with respect to the second count of the  
6 indictment, attempted obstruction of justice and the  
7 third count of the indictment, conspiracy as aforesaid,  
8 there are two parts to the Government's charge as to  
9 attempt to obstruct justice and conspiracy to attempt  
10 to obstruct justice, the first pertaining to the  
11 ownership of horses and the second pertaining to the  
12 conspiracy to fix races. With respect to the first  
13 of such parts pertaining to the ownership of horses, the  
14 Government points to the conversation between Turcotte,  
15 Gerry and Kraft on August 19, 1973 and certain other  
16 evidence in the case. If you find the elements of one  
17 or the other or both of the charges proved beyond a  
18 reasonable doubt as to such parts as to a defendant or  
19 both of them, then you must convict such defendant or  
20 both of them, as the case may be, on the count or counts  
21 so proved; otherwise, in each case you must acquit.

22 As to the second of such parts pertaining to  
23 the conspiracy to fix races, the Government points to  
24 certain conversations between Gerry and Kraft at which  
25 Turcotte was not present, including part of the

## Charge of the Court

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2  
3 conversation on August 19. You may not hold any of  
4 such conversations held outside of the presence of  
5 Turcotte against him and if you find the attempt to  
6 obstruct justice and the conspiracy to obstruct justice  
7 were based solely on a conspiracy to fix races, as  
8 distinguished from the ownership of the horses, then you  
9 must acquit the defendant Turcotte and determine the  
10 second and third counts solely against Gerry.

11 Now, as part of each count of the indictment  
12 there is the question of intent on the part of each  
13 defendant.

14 Intent ordinarily may not be proved directly,  
15 because there is no way of fathoming or scrutinizing  
16 the operations of the human mind. But you may infer  
17 the defendant's intent from the surrounding circumstances.  
18 You may consider any statement made and done or omitted  
19 by the defendant, and all other facts and circumstances  
20 in evidence which indicate his state of mind. It is  
21 ordinarily reasonable to infer that a person intends  
22 the natural and probable consequences of acts knowingly  
23 done or knowingly omitted.

24 Now, the word "knowingly" is used in the counts  
25 in the indictment.

An act is done "knowingly" if done voluntarily



## Charge of the Court

and intentionally, and not because of mistake or accident or other innocent reason.

The purpose of adding the word "knowingly" was to insure that no one would be convicted for an act done because of mistake, or accident, or other innocent reason.

As stated before, with respect to an offense such as charged in this case, specific intent must be proved beyond a reasonable doubt before there can be a conviction.

An act is done "willfully" if done voluntarily and intentionally, and with the specific intent to do something the law forbids; that is to say, with bad purpose either to disobey or to disregard the law.

Statements and arguments of counsel are not evidence in the case, unless made as an admission or stipulation of fact. When the attorneys on both sides stipulate or agree as to the existence of a fact, you must, unless otherwise instructed, accept the stipulation as evidence, and regard that fact as proved.

Unless you are otherwise instructed, the evidence in the case always consists of the sworn testimony of the witnesses, regardless of who may have called them, and all exhibits received in evidence, regardless of

## Charge of the Court

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2 who may have produced them, and all facts which may  
3 have been admitted or stipulated, and all facts and  
4 events which may have been judicially noticed, and all  
5 applicable presumptions stated in these instructions.

6 Any evidence as to which an objection was  
7 sustained by the Court and any evidence ordered stricken  
8 by the Court must be entirely disregarded.

9 Evidence does include, however, what is brought  
10 out from witnesses on cross-examination as well as what  
11 is testified to on direct examination.

12 Unless you are otherwise instructed, anything  
13 you may have seen or heard outside the Courtroom is not  
14 evidence, and must be entirely disregarded.

15 You are to consider only the evidence in the  
16 case and your verdict is to be based on the evidence  
17 only. But in your consideration of the evidence, you  
18 are not limited to the bald statements of the  
19 witnesses. In other words, you are not limited solely  
20 to what you see and hear as the witnesses testify. You  
21 are permitted to draw, from facts which you find have  
22 been proved, such reasonable inferences as you feel are  
23 justified in the light of experience.

24 Inferences are deductions or conclusions which  
25 reason and common sense lead the Jury to draw from facts



## Charge of the Court

which have been established by the evidence in the case.

If a lawyer asks a witness a question which contains an assertion of fact you may not consider the assertion as evidence of that fact. The lawyer's statements are not evidence.

You, as jurors, are the sole judges of the credibility of the witnesses and the weight their testimony deserves.

You should carefully scrutinize all the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to show whether a witness is worthy of belief. Consider each witness' intelligence, motive and state of mind, and demeanor and manner while on the stand. Consider the witness' ability to observe the matters as to which he has testified and whether he impresses you as having an accurate recollection of these matters. Consider also any relation each witness may bear to either side of the case, the manner in which each witness might be affected by the verdict, and the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different

## Charge of the Court

witnesses, may or may not cause the Jury to discredit such testimony. Two or more persons witnessing an incident or a transaction may see or hear it differently and innocent misrecollection, like failure of recollection, is not an uncommon experience.

In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood. On the one hand you have direct evidence of the issue and on the other hand you may have circumstantial evidence of the issue. The law does not hold that one type of evidence is necessarily of better quality than the other. The law requires only that the Government prove its case beyond a reasonable doubt both on the direct and circumstantial evidence. At times the Jury might feel the circumstantial evidence is of better quality. At other times they may feel direct evidence is of better quality. That judgment is left entirely to you.

After making your own judgment, you will give the testimony of each witness such credibility, if any, as you may think it deserves.

The testimony of a witness may be discredited or



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2 impeached by showing that he previously made statements  
3 which are inconsistent with his present testimony. The  
4 earlier contradictory statements are admissible only  
5 to impeach the credibility of the witness, and not to  
6 establish the truth of these statements. It is the  
7 province of the Jury to determine the credibility, if  
8 any, to be given the testimony of a witness who has  
9 been impeached.

10 If a witness is shown knowingly to have testified  
11 falsely concerning any material matter, you have a  
12 right to distrust such witness' testimony in other  
13 particulars and you may reject all the testimony of  
14 that witness or give it such credibility as you may  
15 think it deserves.

16 An act or omission is "knowingly" done, if done  
17 voluntarily and intentionally and not because of mistake  
18 or accident or other innocent reason.

19 The testimony of a witness may be discredited or  
20 impeached by showing that the witness has been convicted  
21 of a felony, that is, of a crime punishable by  
22 imprisonment for a term of years. Prior conviction does  
23 not render a witness incompetent to testify, but is  
24 merely a circumstance which you may consider in determining  
25 the credibility of the witness. It is the province of

Charge of the Court

the Jury to determine the weight to be given to any  
prior conviction as impeachment.

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2 A defendant who wishes to testify, is a compe-  
3 tent witness and the defendant's testimony is to be  
4 judge in the same way as that of any other witness.

5 The law does not compel a defendant in a  
6 criminal case to take the witness stand and testify  
7 and no presumption of guilt may be raised and no  
8 inference of any kind may be drawn from the failure  
9 of a defendant to testify.

10 As stated before, the law never imposes upon  
11 a defendant in a criminal case the burden or the  
12 duty of calling any witnesses or producing any  
13 evidence.

14 It is the duty of the attorney on each side of  
15 the case to object when the other side offers testi-  
16 mony or other evidence which the attorney believes is not  
17 properly admissible. You should not show prejudice  
18 against any attorney or his client because the attorney  
19 has made objections.

20 Upon allowing testimony or other evidence to  
21 be introduced over the objection of an attorney, the  
22 Court does not, unless expressly stated, indicate any  
23 opinion as to the weight or effect of such evidence.  
24 As stated before, the jurors are the sole judges of  
25 the credibility of all the witnesses and the weight

1  
2 and effect of all evidence.

3 When the Court has sustained an objection to  
4 a question addressed to a witness the jury must  
5 disregard the question entirely, and may draw no  
6 inference from the wording of it, or speculate as to  
7 what the witness would have said if he had been  
8 permitted to answer any question.

9 During this trial certain objections were made  
10 by defense counsel as well as the United States  
11 Attorney. Some objections were sustained and some  
12 objections were overruled. You are not to concern  
13 yourselves in the slightest degree with the rulings  
14 the Court has made and the rulings should not enter  
15 your deliberations at all while you deliberate on  
16 this case. You are not to be influenced in the  
17 slightest degree by the Court's rulings.

18 The Court has no opinion one way or the other  
19 as to the innocence or guilt as to either of the  
20 defendants. If by chance, by reason of what the  
21 Court has said in its rulings, you may have gotten  
22 an impression that the Court has an opinion in this  
23 case, I say to you, you are to eliminate entirely  
24 from your mind anything the Court might have said to  
25 any counsel or witness or the manner in which the



1  
2 Court said it because it has no place in your  
3 deliberations.

4 You are here to determine the guilt or  
5 innocence of the two defendants from the evidence in  
6 the case. You are not called upon to return a verdict  
7 as to the guilt or innocence of any other person or  
8 persons. So, if the evidence in the case convinces  
9 you beyond a reasonable doubt of the guilt of the  
10 accused, you should so find, even though you may believe  
11 one or more other persons are guilty. But if any  
12 reasonable doubt remains in your minds after impartial  
13 consideration of all the evidence in the case, of  
14 course, it is your duty to find the accused not  
15 guilty.

16 The verdict must represent the considered  
17 judgment of each juror. In order to return a verdict,  
18 it is necessary that each juror agree thereto and  
19 your verdict must be unanimous.

20 It is your duty, as jurors, to consult with  
21 one another, and to deliberate with a view to reaching  
22 an agreement, if you can do so without violence to  
23 individual judgment.

24 Each of you must decide the case for himself  
25 or herself, but do so only after an impartial

1  
2 consideration of the evidence in the case with your  
3 fellow jurors. In the course of your deliberations  
4 do not hesitate to re-examine your own views, and  
5 change your opinion, if convinced it is erroneous.  
6 But do not surrender your honest conviction as to the  
7 weight or effect of evidence, solely because of the  
8 opinion of your fellow jurors or for the mere purpose  
9 of returning a verdict.

10 If any reference by the Court or by counsel to  
11 matters of evidence does not coincide with your own  
12 recollection, it is your recollection which should  
13 control during your deliberations.

14 The punishment provided by law for the offenses  
15 charged in the indictment is a matter exclusively  
16 within the province of the Court and should never  
17 be considered by the jury in any way in arriving at  
18 an impartial verdict as to the guilt or innocence  
19 of the accused.

20 Upon retiring to the jury room the gentleman  
21 seated nearest me in the front row, Juror No. 1, will  
22 act as Foreman unless he chooses not to do so, in  
23 which case, you will elect another person as foreman.  
24 The Foreman will preside over your deliberations and  
25 be your spokesman here in court.



Remember at all times, you are not partisans. You are judges, judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

There is nothing peculiarly different in the way a jury should consider the evidence in a criminal case from that in which all reasonable persons treat any question depending upon evidence presented to them. You are expected to use your good common sense, consider the evidence in the case for only those purposes for which it has been admitted and give it a reasonable and fair construction, in the light of your common knowledge of the natural tendencies and inclinations of human beings.

If the accused be proved guilty beyond reasonable doubt, say so. If either of them be not so proved guilty beyond a reasonable doubt, say so.

You must render a verdict with respect to each of the three counts of the indictment. The first pertains only to the defendant Turcotte. Under the second and third counts you must return a verdict as to each of the defendants Turcotte and Gerry, separately.

If it becomes necessary during your delibera-

1  
2 tions to communicate with the Court, you may send a  
3 note by a Deputy Marshal signed by your Foreman or  
4 by one or more members of the jury. No member of  
5 the jury should ever attempt to communicate with the  
6 Court by any means other than a signed writing and the  
7 Court will never communicate with any member of the  
8 jury on any subject touching the merits of the case,  
9 otherwise than in writing, or orally, here in open  
10 court.

11 You will note from the oath which will be  
12 given shortly to the Deputy Marshals that they, too,  
13 as well as all other persons, are forbidden to  
14 communicate in any way or manner with any member of  
15 the jury on any subject touching the merits of the  
16 case.

17 Bear in mind also that you are never to reveal  
18 to any person -- not even to the Court -- how the  
19 jury stands, numerically or otherwise on the question  
20 of the guilt or innocence of the accused until after  
21 you have reached a unanimous verdict.

22 Finally, your oath sums up your duty:

23 Without fear or favor to any man, you will well  
24 and truly try the issues between the parties according  
25 to the evidence given to you in court and the laws



of the United States.

Now, ladies and gentlemen, I am going to send you out to the jury room for, hopefully, only a few minutes, during which initial period of time I will ask you not to discuss the case nor begin your deliberations. Talk about something else and do not talk about the case at all until the case is fully submitted to you.

I want to discuss certain matters with counsel and then we will have a final short chat and then you will begin your deliberations.

(Jury excused at 11:15 a.m.)

THE COURT: All right, gentlemen.

MR. CASTELLANO: I have no exceptions to your charge nor do I have any further requests to make.

THE COURT: Mr. Bobick?

MR. BOBICK: Your Honor, I except to the entire charge as being unfair to the defendant Garry on the basis of the fact that the instructions of law given to the jury were improper and I also say, your Honor, that I object to that part of the charge where the Court said that the testimony of Mr. Wilkinson or the testimony of the Foreman is sufficient to prove that the Grand Jury was properly empowered.

1  
2 THE COURT: Empanelled.

3 That's been determined, as a matter of law,  
4 as I understand.

5 MR. BOBICK: Well, I don't understand.

6 The indictment says the Grand Jury was properly  
7 sworn and there is no such evidence on the record  
8 that it was properly sworn or authorized to accept  
9 those oaths at that time and the Court saying, merely,  
10 that the Foreman saying he executed the oath to  
11 Turcotte was sufficient, I feel was an improper  
12 charge and I also say, your Honor, 18 U.S.C. 1503  
13 specifically says, "Corruptly with threat or coercion."

14 I may not be getting it right but there's  
15 certainly been no threats or coercion and I call  
16 specific attention to Kraft's testimony. He wasn't  
17 afraid. There was no coercion, no blackmail, no  
18 threats.

19 MR. DEL GROSSO: Your Honor, it says, "Corruptly  
20 or."

21 THE COURT: That's my recollection.

22 MR. BOBICK: I take exception to that.

23 THE COURT: To the statute?

24 MR. BOBICK: No.

25 THE COURT: I'm sorry.



1  
2 MR. BOBICK: I take exception to that part of  
3 the charge where the Court went into sports bribery  
4 saying they could find the defendant Gerry guilty of  
5 sports bribery if they couldn't find him guilty of  
6 obstruction of justice.

7 I take exception to your Honor saying that  
8 they could play that portion of the tape as to sports  
9 bribery.

10 As to sports bribery, that has been decided by  
11 another court and to use that charge against this  
12 defendant is improper and unfair.

13 THE COURT: I don't believe I said that.

14 MR. BOBICK: If you look at your notes --

15 THE COURT: I referred to it as the second  
16 part of the Government's -- proof, with respect to  
17 the -- it's proof pertaining to the obstruction of  
18 justice and conspiracy to obstruct justice.

19 MR. BOBICK: Why don't you look at your notes?

20 THE COURT: I know what my notes say.

21 MR. BOBICK: Well, at that point, I object to  
22 what you said and what you said to the jury.

23 MR. SHANLEY: Mr. Del Grosso heard you say one  
24 thing and I the other.

25 Did you instruct the jury that materiality --

1  
2 did you charge them that you had decided the testimony  
3 was material?

4 THE COURT: Yes.

5 MR. DEL GROSSO: I'm sorry. I missed it.

6 THE COURT: I did. That's how my notes read  
7 and I'm sure I said it.

8 MR. CASTELLANO: Oh, yes. It hurt me here  
9 (indicating) as you said it.

10 THE COURT: Yes. You have already taken  
11 exception to it, I believe.

12 MR. BOBICK: On the basis of the Court's  
13 charge to the jury I move for a mistrial on the  
14 defendant Gerry.

15 THE COURT: Motion denied.

16 MR. BOBICK: On the basis of the Court's charge  
17 I move for a severance for the defendant Gerry.

18 THE COURT: Motion denied.

19 Are you through? Can I bring the jury in?

20 MR. BOBICK: I think there's nothing else I  
21 can protect on the record.

22 THE COURT: O.K.

23 (The jury entered the jury box at 11:20 a.m.)

24 THE COURT: All right.

25 Alternate No. 2, you are excused with the thanks



of the Court for your service during --

MR. SHANLEY: There's one juror missing.

THE COURT: Oh, I beg your pardon.

(Pause.)

(Whereupon, Juror No. 9 entered the courtroom.)

THE COURT: You are excused with the thanks of the Court for your service.

I realize we went beyond what we anticipated but that was unavoidable.

Thank you very much. Your services are greatly appreciated.

THE CLERK: Take your card downstairs.

ALTERNATE NO. 2: Is it all right if I go back? I have some things there?

THE COURT: Yes.

THE CLERK: Go out that way.

(Whereupon, Alternate No. 2 was discharged.)

THE COURT: Swear in the Marshals.

(Whereupon, two Deputy United States Marshals were sworn by the Clerk of the Court at 11:20 a.m.)

THE COURT: May I have the exhibits, please?

(Documents handed to the Court.)

MR. BOBICK: May we have a sidebar?

THE COURT: Yes.

(Sidebar discussion.)

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THE COURT: Is there any objection to giving them a copy of the indictment?

MR. SHANLEY: It's their recollection.

THE COURT: I believe Mr. Bobick wants to give them the indictment.

MR. BOBICK: Yes.

THE COURT: Any objection to that?

MR. CASTELLANO: Well, I just don't feel that it is ever done.

MR. BOBICK: O.K.

THE COURT: If they come out and ask for it, of course, you understand --

MR. CASTELLANO: Yes. I don't remember it being done.

THE COURT: Mr. Bobick wants it done. He asked for it.

MR. CASTELLANO: I didn't know that, not that it makes a difference.

THE COURT: Whatever you gentlemen agree upon is all right with me.

O.K.?

MR. BOBICK: O.K.

(Conclusion of sidebar discussion.)

(In open court.)



1 THE COURT: All right, Mr. Foreman.

2 (Jury excused for deliberations at 11:22 a.m.)

3 MR. BOBICK: What bothers me is that the whole  
4 Grand Jury of Turcotte has gotten in through --

5 THE COURT: If you want the indictment to go  
6 in you can have it.

7 MR. SHANLEY: The testimony is in evidence.

8 MR. BOBICK: The whole testimony?

9 THE COURT: The whole thing went in.

10 MR. BOBICK: The only thing they can hold him  
11 guilty of, the perjury.

12 THE COURT: I understand that.

13 Do you want to send in the indictment?

14 MR. CASTELLANO: I'll consent. I have no  
15 objection.

16 MR. SHANLEY: I am not sure it is proper.

17 THE COURT: It is perfectly proper to send it  
18 in. I don't see any reason not to send a copy of the  
19 indictment in there.

20 MR. DEL GROSSO: If they ask for it, yes.

21 MR. BOBICK: Forget about it.

22 MR. CASTELLANO: I now make a motion and I  
23 join Mr. Bobick's motion in view of the fact that the  
24 entire Grand Jury testimony of Eldon Turcotte has  
25 gone into the jury as one of the exhibits and in view

1 of the fact that he is only charged with the specific  
2 questions and answers contained in the indictment  
3 as being perjurious, that the indictment go in  
4 there.

5 THE COURT: I'll allow it to go in.

6 (Continued on next page.)  
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